IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12356 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHATIJABEN OSMAN AIBANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12356 of 2004

MR ANSHIN H DESAI for Petitioner No. 1

Mr.Nagesh Sood, learned A.G.P.for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/02/2005

ORAL JUDGEMENT

#. Rule. Mr.Nagesh Sood, learned A.G.P. waives service of rule on behalf of the respondent. With the consent of learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 17.2.2004 and 27.2.2004 in revision application no. 3 of 1997 in dismissing the same and confirming the order passed by the Collector dated 15.7.1996.

#. Mr.Desai, learned advocate appearing for the petitioner has submitted that though the petitioner has also prayed for quashing and setting the order passed by the Collector, Junagadh but if the Court proposes to remand the matter, he will not press the same at this stage.

#. Mr.Desai has submitted that hearing of the revision application was on 12.2.04 and in fact the learned advocate appearing for the petitioner did remain present on 12.2.2004 in the first session and according to him, it was the practice of the then Secretary (Appeals), Revenue Department not to hear the advocates and the matters were decided on the basis of the material available and when the learned advocate went to the office of the Secretary (Appeals) on 12.2.2004 till he was present, the advocate was not called and the matter was decided always in absence of the learned advocates after the learned advocate left. It was the first matter which was being taken by the Secretary (Appeals) and it was decided to hear the learned advocate also and therefore the matter was decided ex-parte as no body could remain present on behalf of the petitioner. Mr.Desai has relied upon the communication / postcard which was sent to his client to the effect that she will be informed the date subsequently. He further submitted that if the matter is remanded and some date is fixed, the learned advocate for the petitioner would remain present on that very day and the matter can be decided and disposed of on merits after hearing and giving opportunity to the learned advocate for the petitioner.

#. In response to the notice issued by this court, Mr.Sood learned A.G.P. appears for the respondents. Record and proceedings of revision application no. 3 of 1997 is called for. Mr.Sood in fact denied the aforesaid statement. He also denied the fact with regard to the practice of the then Secretary (Appeals) not to hear the learned advocates and to decide and dispose of the revision application on the basis of the material available only. Mr.Sood submitted that the revision application was fixed for hearing on 6.11.2003 and on that day, the learned advocate did remain present and submitted the application for adjournment as he wanted to

get certain affidavits from another advocate and the Secretary (Appeals) adjourned the matter to 12.2.2004 with the specific understanding that this would be the last adjournment and the matter will be decided on 12.2.2004 and the same endorsement is also signed by the learned advocate for the petitioner. He, therefore, submitted that when on 12.2.2004, when nobody remained present on behalf of the petitioner, Secretary (Appeals) was well within his right to decide and dispose of the revision application ex-parte on merits on the basis of the material available and accordingly the revision application has been decided and disposed of by order dated 17.2.2004 / 27.2.2004.

#. Heard the learned advocates for the parties.
#. It is true that on 6.11.2003, the application for adjournment was given by the learned advocate for the petitioner and at his instance the matter was adjourned to 12.2.2004. It is also true that on the said application for adjournment itself, it is stated by the Secretary (Appeals) that the matter is adjourned to 12.2.2004 as a last chance and on that day, the matter will be heard. It is the case of the petitioner that in fact the learned advocate for the petitioner did remain present on 12.2.2004 in the office of the Secretary (Appeals). However, it is his case that he was not called by the Secretary (Appeals), as per the practice adopted by the then Secretary (Appeals) to decide and dispose of the revision application on the basis of the material available without hearing the advocates. The said aspect has been denied by Mr.Sood learned A.G.P. It is submitted by Mr.Sood that the revision applications were being decided and disposed of by the then Secretary (Appeals) after giving opportunity of hearing to the concerned learned advocates and the submissions on behalf of the petitioner with regard to non-hearing the advocate is not correct. Be that as it may. When it is submitted by the learned advocate for the petitioner that in fact he remained present on 12.2.2004, there is no reason to disbelieve him, more particularly, considering the postcard written by the learned advocate to the petitioner that next date of hearing will be intimated and she will be informed. Considering the aforesaid facts and circumstances and without going into the larger question and merits whether the then Secretary (Appeals) was hearing the advocates or not, when the decision has been taken ex-parte i.e. without hearing, the learned advocate for the petitioner and/or the petitioner, it will be just and proper to give one additional chance to the petitioner. Mr.Desai, learned advocate for the petitioner has submitted that the learned advocate

appearing for the petitioner would remain present for the purpose of hearing of the aforesaid revision application on 16.2.2005 and on that day, the revision application may be decided and disposed of on merits. Considering the facts and circumstances of the case, the impugned order dated 17.2.2004 / 27.2.2004 in revision application no. 3 of 1997 passed by the Secretary (Appeals) is quashed and set aside without going into the legality and validity of the same only on the ground that the learned advocate for the petitioner was not heard and the matter is remanded to the Secretary (Appeals) for deciding the said revision application afresh on its own merits and in accordance with law. As stated above, the learned advocate for the petitioner will remain present before the Secretary (Appeals) on 16.2.2005 for the purpose of hearing the aforesaid revision application and on that day, the Secretary (Appeals) may decide and dispose of the said revision application on its own merits and in accordance with law.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)